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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5-520
Regulation title	Regulations Governing the Dental Scholarship and Loan Repayment Programs
Action title	Amend regulations regarding existing dental scholarship and loan repayment programs as a result of Periodic Review results.
Date this document prepared	2/20/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Department of Health conducted a periodic review of 12 VAC 5-520 “Regulations Governing the Dental Scholarship and Loan Repayment Programs” pursuant to Executive Order (EO) 36 (2006). The public comment for the periodic review closed 1/2/2008. As a result of this review, the Virginia Department of Health plans to begin the regulatory process to amend these regulations. This is necessary to address comments received from the periodic review, as well as to make the existing regulations clearer and more efficient, thus making the programs easier and more cost-effective to administer.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Board of Health is authorized to make, adopt, promulgate and enforce regulations by § 32.1-12 of the *Code of Virginia*.

§ 32.1-64.1 of the *Code of Virginia* requires the Board of Health to establish annual dental scholarships for students in good standing at Virginia Commonwealth University and to promulgate regulations to administer this scholarship program.

Chapter 174 of the 2000 Acts of Assembly created the Dental Loan Repayment Program in § 32.1-122.9:1 of the *Code of Virginia*, authorizing the Board to establish “a dentist loan repayment program for graduates of accredited dental schools ...who agree to perform a period of dental service in the Commonwealth in an underserved area as defined in § 32.1-122.5 of the dental scholarship program or a dental health professional shortage area designated in accordance with the criteria established in 42 C.F.R. Part 5.” This Section also authorizes the State Board of Health to “promulgate regulations to implement the Dentist Loan Repayment Program within 280 days of enactment of the provision.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The dental scholarship and loan repayment programs help protect and improve the public’s health and welfare by improving the distribution of dentists to ensure that dental health services are available in the underserved areas of Virginia. The *Code of Virginia* requires that regulations be adopted for the administration of the programs.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The following changes to the dental scholarship and loan repayment regulations are proposed to resolve ambiguities in language and to improve the ease of administration of the program:

- (i) Amend Section 12 VAC 5-520-10 to more clearly define certain terms used in the regulation.
- (ii) Update the effective date of the regulatory changes in Section 12VAC 5-520-3.
- (iii) Amend Section 12 VAC 5-520-130 to add information about the time limits for application of dental specialists such as oral surgeons.
- (iv) Amend Section 12 VAC 5-520-150 to remove the criteria that scholarships be awarded prior to loan repayment.
- (v) Remove the provision that allows dentists who default on their scholarship contract and later fulfill their obligation to be reimbursed for monies paid in Section 12 VAC 5-520-160.
- (vi) Amend 12 VAC 5-520-190 and 12 VAC 5-520-200 to clarify and make consistent the terms of default and restitution.

(vii) Amend 12 VAC 5-520-210 to shorten the response time to requests from the Commissioner from 60 to 30 days.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to making the proposed amendments other than allowing the regulations to stand as is. If the regulations are not changed, some dental specialists such as oral surgeons will remain ineligible for loan repayment awards even if they meet the criteria of practicing in a dental area of need and accepting public assistance. Leaving the regulations unchanged would mean that amendments that could clarify the program and improve its administration could not be made.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by contacting Elizabeth Barrett, Virginia Department of Health, 109 Governor Street, 9th floor, Richmond, VA 23219. Phone (804) 864-7824; fax (804) 864-7783; or email elizabeth.barrett@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is seeking input from Virginia Commonwealth University School of Dentistry with respect to the scholarship program. A presentation, including notification that the regulations were undergoing Periodic Review, was made to the statewide dental coalition, Virginians for the Improvement of Access to Dental Care. The Virginia Dental Association and the Virginia Dental Hygienists' Association participate in this coalition and were present at the meeting.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Many Virginians, mainly in non-metropolitan areas, will benefit from the amendments to the dental scholarship and loan repayment programs. These actions are necessary to improve the access to dental specialty and general oral health services and to ensure adequate availability of dental services in areas of Virginia where there are presently insufficient dental services.

Improving access to dental health services is a continuing challenge in many rural areas. Poor dental health has been increasingly linked to general well-being, so improving access to dental health services should not only improve dental health but improve general well being. Improved access may indirectly serve to strengthen the family.

Periodic review - Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether

the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
M. Todd Brandt	Since the current regulations state that a dentist must be within five years of graduation to be eligible for loan repayment, some dental specialists with long post-graduate training (i.e., oral surgeons), are past the time frame for the loan repayment program by the time that they begin practicing. Dr. Brandt would like the regulations modified so that dentists may apply for loan repayment within 5 years from the time that they start to practice rather than from when they complete dental school.	VDH acknowledges that the current regulations, as written, disqualify some specialists from applying who would otherwise meet the loan repayment program criteria. We would like to amend the regulations so that specialists have 5 years from the time that they complete their specialty training to apply for loan repayment, provided that they are also within 10 years of graduation from undergraduate dental school. This will ensure that specialists such as oral surgeons are eligible for loan repayment, and that we continue to assist recent graduates who are most likely to be burdened with large dental school debt.
Sam Mela	The Department of Mental Health, Mental Retardation, and Substance abuse should examine its quality assurance and quality control programs, in light of the murders at Virginia Polytechnic Institute last year.	Mr. Mela's comments were directed to a different agency than VDH and are unrelated to the dental scholarship and loan repayment programs.

The regulation meets the criteria set out in Executive Order 36, in that it is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Periodic review - Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulations are needed for the administration of the Virginia Dental Scholarship and Loan Repayment programs. § 32.1-64.1 of the *Code of Virginia* and Chapter 174 of the 2000 Acts of Assembly require the Board of Health to create regulations to implement and conduct the programs.

The existing regulations are not complex but have some ambiguities and confusing terms. The proposed amendments are not complex and will serve to increase the understandability and ease of administration of the Dental Scholarship and Loan Repayment programs. The regulations do not overlap, duplicate, or conflict with federal or state law or regulation.

The regulations were last evaluated in 2000 when the General Assembly authorized the Board of Health to establish a dentist loan repayment program according to § 32.1-122.9:1 of the *Code of Virginia*.

The regulations may have a positive impact on small businesses since dentists working in private offices, which are primarily small businesses, could qualify for loan repayment. Otherwise, no impact on small business is anticipated.